IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SECOND APPEAL NO.1510 OF 2005

Hambirrao Gangaram Mahadik .. Appellant.

Versus

Kamlakar Sitaram Kulkarni .. Respondent.

Mr.Apte for appellant.

Mr.S.M.Raikar for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 2nd AUGUST, 2007.

P.C.:

1. Heard Mr.Apte for the appellant. Appellant is the original defendant, who is aggrieved by the Judgement and Decree of the lower Appellate Court in Reg. Civil Suit No.179 of 2002.

2. The only issue that is sought to be pressed in support of the submission that a substantial question of law arise for consideration in the Second Appeal is that the original plaintiff in the suit did not describe the

suit property by setting out boundaries thereof on four sides, therefore, when evidence in the suit is pointing towards the possession of the defendant, which is traceable to a Sale Deed, then, the suit was rightly dismissed by the Trial Court.

3. The suit was filed by the original respondent for permanent injunction restraining the appellant before me from obstructing his peaceful possession in the suit property or to cause any damage to the standing trees and temple situate therein.

4. The suit was dismissed by the trial court but on Appeal, the lower Appellate Court has rightly relied upon the statements in the written statement. In paragraph 8 of the impugned judgement and decree, the lower Appellate Court has considered the case of the appellant before me as culled out from the pleadings. The ownership of the father of the respondent plaintiff being admitted so also the existence of the temple and the trees in the plot, and relying upon the Gram Panchayat assessment, the suit has been rightly decreed.

5. The appellant claims to have purchased the property from the father of the plaintiff by a

unregistered Sale Deed executed in the year 1949 and based upon that, the assertion of physical possession is made. The lower Appellate Court has found out from the record that the boundaries are not mentioned in the plaint nor the measurements. However, in the facts peculiar to this case, the report of the Court Commissioner has been relied upon to hold that the omission to state these details is not fatal.

6. This is not a Court where any re-appreciation or re-appraisal of the materials is permissible. The lower Appellate Court has performed its duty as first Appellate Court and held that the title and possession of the suit property is proved so also the alleged obstruction by the appellant defendant. In this view of the matter, it has rightly decreed the suit for perpetual injunction. There is no perversity disclosed in the impugned Judgement and Decree, as it is in consonance with the oral and documentary evidence on record. There is no substantial question of law involved and there is no merit in the Second Appeal. It is dismissed summarily. No costs.

(S.C.Dharmadhikari, J.)